

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

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Procedures for Reviewing Requests for Relief From  
State and Local Regulations Pursuant to  
Section 332(c)(7)(b)(v) of the Communications  
Act of 1934 )

WT Docket No. 97-192

)  
)  
Guidelines for Evaluating the Environmental  
Effects of Radiofrequency Radiation )

ET Docket No. 93-62

)  
)  
Petition for Rulemaking of the Cellular  
Telecommunications Industry Association Concerning  
Amendment of the Commission's Rules To Preempt  
State and Local Regulation of Commercial Mobile  
Radio Service Transmitting Facilities )

RM-8577

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION

Katherine M. Harris  
Stephen J. Rosen  
WILEY, REIN & FIELDING  
1776 K Street, NW  
Washington, DC 20006  
(202) 429-7000

Mark J. Golden,  
Senior Vice President, Industry Affairs  
Sheldon Moss  
Manager, Government Relations  
PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561  
(703) 739-0300

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**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, hereby submits its reply to the comments filed on the Commission's Notice of Proposed Rulemaking in

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

the above-captioned proceeding.<sup>2</sup> As described in greater detail below, the record reflects that the Commission should exercise its plenary authority to ensure that localities do not attempt to directly or indirectly regulate the environmental effects of radiofrequency emissions in a manner that is inconsistent with the Commission's standards.

## **I. INTRODUCTION AND SUMMARY**

This proceeding produced a divided record. Wireless service providers favored broad federal preemption of state and local efforts to regulate tower siting based on the environmental effects of radio frequency ("RF") emissions as consistent with Sections 332(c)(7)(B)(iv)-(v) of the Communications Act of 1934, as amended ("Communications Act").<sup>3</sup> States and localities generally asserted that such federal preemption was inconsistent with the statute. This split record is the product of two very different means of interpreting Sections 332(c)(7)(B) (iv)-(v).

The wireless service providers read this section in its entirety, and used its legislative history to reach the inescapable conclusion that the FCC, and not states and localities, is the entity charged by Congress with developing a comprehensive, nationwide regulatory scheme for RF emissions. The states and localities, on the other hand, read this section in an extremely cramped fashion, and attempted to demonstrate that the hundreds of states and localities are empowered to promulgate their own RF compliance regimes. As demonstrated below, there is

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<sup>2</sup> *Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934*, FCC 97-303 (Aug. 25, 1997) (Second Memorandum Opinion and Order and Notice of Proposed Rulemaking) ("*Second MO&O*" and "*Further Notice*").

<sup>3</sup> 47 U.S.C. § 332(c)(7)(B)(iv)-(v).

no way to reconcile state and local insistence that they have expansive authority to promulgate their own RF compliance regimes with the broadly preemptive language of this statutory section.

As described by the wireless service providers that participated in this docket, the Commission's plenary Section 332(c)(7)(B) authority to regulate RF emissions has a number of important consequences. Preliminarily, because Section 332(c)(7)(B)(v) gives the Commission the power to review any state or local "act" that is inconsistent with its RF regulations, affected entities can seek immediate FCC preemption of local zoning board decisions or local tower siting regulations of general applicability, without awaiting the result of any appeals of these decisions.

Further, inherent in the Commission's Section 332(c)(7)(B)(v) power to review a state or locality's "failure to act," is the Commission's power to define how much time may elapse before a state or locality is deemed to have failed to act. Any other rule would be inconsistent with this grant of authority and would permit local governments to deny or inappropriately delay necessary zoning authority simply by declining to take action on a proposal.

Similarly, inherent in the Commission's authority to review any state or local facilities siting decision that is based "directly or indirectly" on the environmental effects of RF emissions is the power to review the entire administrative record — including any oral testimony — to determine whether any prohibited indirect regulation has occurred. By examining this oral testimony, the Commission will in no way impair the First Amendment right of citizens to participate in local zoning hearings. Rather, this testimony will be just one factor that the Commission takes into account in its comprehensive review of the local administrative record.

In addition, the Commission's broad statutory authority over the environmental effects of RF emissions extends to both procedural and substantive matters. The Commission is therefore empowered to promulgate a regulatory regime that relies on self-certification by licensees and

grants such licensees a rebuttable presumption of compliance. Given the penalties that already exist for non-compliance with the Commission's rules, there is no reason to lend credence to the suggestions made by various commenters that this compliance regime will endanger the safety of the American public.

Finally, the record reflects that the Commission should set forth procedures that ensure that preemption petitions are decided by the Commission quickly and efficiently. Such procedures include prompt action by the Commission on these petitions, limiting participation in the proceeding to interested parties, and utilizing the Commission's default judgment procedures.

## **II. SECTION 332(c)(7)(B)(v) CLEARLY GIVES THE COMMISSION THE AUTHORITY TO PREEMPT "ACTS" OF STATES AND LOCALITIES — INCLUDING ZONING BOARD DECISIONS — THAT REGULATE TOWER SITING BASED ON RF CONSIDERATIONS**

Initially, there was broad concurrence from carriers with PCIA's view that, under Section 332(c)(7)(B)(v), the Commission has extensive authority to preempt "acts" by states or localities that attempt to regulate tower siting based on RF considerations.<sup>4</sup> Thus, the Commission need not define "final action," and can take preemptive action based on a simple zoning board decision rather than waiting for the adversely affected carrier to exhaust its state or local administrative remedies. In addition, a number of parties pointed out that the Commission should preempt zoning ordinances that facially violate Section 332(c)(7)(B)(iv), even if the state or locality has not yet rejected a specific application.<sup>5</sup>

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<sup>4</sup> See, e.g., BellSouth Corporation ("BellSouth") Comments at 2; Ameritech Mobile Communications, Inc. ("Ameritech") Comments at 4.

<sup>5</sup> See, e.g., Ameritech Comments at 2-4.

States and localities, on the other hand, argued that the FCC's preemptive authority is limited, and that before a carrier could bring a preemption petition before the FCC, it would have to exhaust all of its local administrative remedies. The National League of Cities and the National Association of Telecommunications Officers and Advisors ("NLC/NATOA"), for example, argued that the FCC's jurisdiction over RF emission standards is "strictly limited" and shared with the courts.<sup>6</sup> These parties further claimed that, because zoning board decisions are not a "final action" within the meaning of Section 332(c)(7)(B)(v), the Commission is without jurisdiction to preempt such decisions.<sup>7</sup>

These parties misread the pertinent statute and its legislative history, which describes an exclusively federal scheme for regulating the environmental effects of RF radiation.<sup>8</sup> Preliminarily, the plain language of Section 332(c)(7)(B)(iv) directly prohibits states and localities from regulating the placement of "personal wireless service facilities on the *basis of the environmental effects of radio frequency emissions...*,"<sup>9</sup> provided the facility complies with the Commission's RF rules. The Conference Report adds that this section is intended to prevent state and local tower siting regulation based "*directly or indirectly*" on the environmental effects

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<sup>6</sup> NLC/NATOA Comments at 5. *See also* David Fichtenberg, Spokesperson for the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission Radiofrequency Health and Safety Rules Comments at 40 (arguing that "courts of competent jurisdiction may rule on whether a party to a dispute inappropriately sought relief from the Commission ...").

<sup>7</sup> NLC/NATOA Comments at 7-9. *See also* City and County of San Francisco Comments at 2-3; Orange County, Fla. Comments at 1-3.

<sup>8</sup> *See Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299 (1988) ("Congress explicitly may define the extent to which its enactments preempt state law").

<sup>9</sup> 47 U.S.C. § 332(c)(7)(B)(iv) (emphasis added).

of RF emissions *and* that “[t]he limitations on the role and powers of the Commission under this subparagraph relate to local land use regulations and *are not intended to limit or affect the Commission’s general authority over radio telecommunications, including the authority to regulate the construction, modification, and operation of radio facilities.*”<sup>10</sup>

It is hard to imagine a more clear statement of Congressional intent to preempt state and local regulation of the environmental effect of RF emissions. Such authority is also consistent with the Commission’s historic role as the overseer of radio emissions in the United States under Sections 1 and 301 of the Communications Act.<sup>11</sup> As stated in *Allen B. Dumont Laboratories, Inc. v. Carroll*,<sup>12</sup> the purpose of the Communications Act was to “create a communications commission with regulatory power over all forms of electrical communication.” The “all inclusive”<sup>13</sup> nature of Section 332(c)(7)(B)(iv)’s language further implies a broad grant of federal jurisdiction.

Not only does the Commission have broad general jurisdiction over RF emissions, but requiring the exhaustion of local remedies before a party can seek redress at the Commission is inconsistent with the plain meaning of the word “act” as used in Section 332(c)(7)(B)(v). As noted by a number of wireless providers, the FCC has jurisdiction over state and local “acts,” not just “final actions,” that attempt to regulate facility siting based on the environmental effects of

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<sup>10</sup> H.R. Rep. No. 104-458, at 208-209 (1996) (“Conference Report”) (emphasis added).

<sup>11</sup> 47 U.S.C. §§ 151, 301.

<sup>12</sup> 184 F.2d 153, 155 (3<sup>rd</sup> Cir.), *cert. denied*, 340 U.S. 929 (1951) (citations omitted).

<sup>13</sup> *Id.*



RF emissions.<sup>14</sup> Primeco Personal Communications, L.P. (“Primeco”), for example, cited well-established canons of statutory construction to the effect that Congress is presumed to have purposefully distinguished between “acts” and “final action” in drafting this section.<sup>15</sup>

Similarly, aggrieved parties should be permitted to petition the Commission for relief from statutes of general applicability (*i.e.*, facially deficient statutes) that attempt to regulate facilities siting based on the environmental effects of RF radiation.<sup>16</sup> Like adverse zoning decisions, such statutes of general applicability are preemptable state and local “acts” as soon as they become law.

### **III. “FAILURE TO ACT” MUST BE DEFINED IF THE COMMISSION IS TO CARRY OUT ITS STATUTORY MANDATE**

In addition, many wireless service providers agreed that the Commission must define “failure to act” with reference to a specific timeframe for state or local action. Failure to do so will allow states and localities to use RF considerations to delay action on tower siting applications virtually indefinitely by simply failing to act on these applications in a timely fashion.<sup>17</sup> As noted by Sprint Spectrum, because localities have numerous subtle ways of

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<sup>14</sup> Southwestern Bell Mobile Systems, Inc., Southwestern Bell Wireless, Inc., and Pacific Bell Mobile Services (“SBMS”) Comments at 2-4. *See also* Ameritech Comments at 3-4; BellSouth Corporation (“BellSouth”) Comments at 2; GTE Service Corporation (“GTE”) Comments at 1-5; U S WEST, Inc. (“U S WEST”) Comments at 18-19.

<sup>15</sup> Primeco Comments at 11 (citing *Russello v. United States*, 464 U.S. 16, 23 (1983)).

<sup>16</sup> Ameritech Comments at 6; Primeco Comments at 10-12.

<sup>17</sup> Ameritech Comments at 4; GTE Comments at 3-5.

delaying application processing, a time limit should be imposed, after which the locality will be deemed to have failed to act.<sup>18</sup>

Some localities, on the other hand, make the rather untenable suggestion that, under Section 332(c)(7)(B)(v), the Commission should defer to the courts in resolving “failure to act” disputes.<sup>19</sup> This suggestion is inconsistent with the Commission’s explicit statutory authority to resolve RF-based wireless facilities siting disputes. That is, had Congress intended that these “failure to act” disputes be deferred to the courts, it would not have given the Commission the authority to resolve them. Because the ability to define how long a period of time constitutes a “failure to act” is implicit in this jurisdictional grant, the Commission must be able to make such a determination.<sup>20</sup>

A number of localities also posit that rather than establish a nationwide period of time after which a locality will be deemed to have failed to act, the Commission should review allegations that a locality has failed to act on a case-by-case basis.<sup>21</sup> The Commission should disregard this suggestion as inconsistent with its statutory authority to set national substantive and procedural standards governing the environmental effects of RF emissions. By subjecting licensees to differing waiting periods in differing jurisdictions, the Commission will be

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<sup>18</sup> Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint Spectrum”) Comments at 5-7.

<sup>19</sup> NLC/NATOA Comments at 9-10.

<sup>20</sup> The Commission could craft its rules to avoid penalizing the municipality when it is the applicant, rather than the municipality, that is responsible for the delay. *See* Orange County, Fla. Comments at 3.

<sup>21</sup> *See, e.g.,* Seattle City Council Comments at 2.

abdicating its important statutory role and denying licensees access to the national standards that Congress intended to govern their relationships with localities.

#### **IV. THE COMMISSION SHOULD BE PERMITTED TO PREEMPT STATE AND LOCAL SITING DECISIONS THAT ARE BASED INDIRECTLY ON RF CONSIDERATIONS**

There was also consensus among carriers that the Commission must be permitted to preempt state and local tower siting decisions that are based indirectly on RF considerations, including situations where the administrative record is replete with references to RF concerns, but the written decision does not explicitly reference RF considerations.<sup>22</sup> This preemption authority stems from the plain meaning of Section 332(c)(7)(B)(iv)'s prohibition against states and localities regulating facilities placement on the "basis" of the environmental effects of RF emissions, and the Conference Report's statement that this section is intended to prevent states and localities from basing such siting regulations "directly or indirectly on the environmental effects of radio frequency emissions..."<sup>23</sup>

States and localities, on the other hand, ignore the plain language and legislative history of this section, and contend that preemption of local actions that are based indirectly on concerns about the environmental effects RF radiation is impermissible. NLC/NATOA is particularly vehement in disparaging the use of legislative history to illuminate the meaning of subsection

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<sup>22</sup> BellSouth Comments at 3; GTE Comments at 5-6; Primeco Comments at 13-14; SBMS Comments at 4-5; Sprint Spectrum Comments at 7.

<sup>23</sup> Conference Report at 208.

(iv), stating that “the legislative history cannot be used to expand the plain meaning of the statute.”<sup>24</sup>

The Commission, in reaching its tentative conclusion that localities are proscribed from “indirectly” regulating tower siting based on concerns about RF emissions, has in no way used the legislative history to “expand” the meaning of subsection (iv). Rather, it has used the Conference Report for the well established practice of illuminating the meaning of the term “basis.”<sup>25</sup> Even without this illumination, however, the plain meaning of “basis” is “a supporting element,” a “foundation.”<sup>26</sup> Thus, there is no contradiction between the plain meaning of “basis,” and the Commission’s suggested interpretation.

States, localities, and concerned citizens further argue that the Commission is not empowered to “look behind” presumptively lawful local administrative decisions,<sup>27</sup> and that localities cannot, consistent with the First Amendment, prevent citizens from speaking out on RF issues at zoning board hearings.<sup>28</sup> Preliminarily, NLC/NATOA has relied on inapplicable

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<sup>24</sup> NLC/NATOA Comments at 12.

<sup>25</sup> See, e.g., *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 68 (1989) (relying on the legislative history of 42 U.S.C. § 1983 to illuminate the meaning of the word “person” as used in the statute).

<sup>26</sup> Websters II New Riverside University Dictionary 156 (1984).

<sup>27</sup> NLC/NATOA Comments at 15-20; see also City and County of San Francisco Comments at 3; Orange County, Fla. at 4.

<sup>28</sup> Seattle City Council Comments at 3; Scott Cunningham Comments at 1; Diane E. Haavind Comments at 1; David Occhiuto Comments at 1; Joann Romano Comments at 1; Concerned Communities and Organizations Comments at 8.

precedent — *Louisiana Public Service Commission v. FCC*<sup>29</sup> — in reaching the conclusion that the Commission lacks the jurisdiction to review the decisions of local zoning boards. Unlike *Louisiana PSC*, where the Commission impermissibly attempted to extend its Section 2 jurisdiction<sup>30</sup> over interstate communications to encompass intrastate rate setting, in this case, Section 332(c)(7)(B)(v) grants the Commission explicit authority to review local zoning decisions that are based on the environmental effects of RF radiation.

Given this explicit grant of authority, there is no reason why the Commission should not be permitted to examine zoning board decisions in their entirety for their underlying rationale, just as a state or federal court would be permitted to do if a non-RF based cause of action were brought to it under subsection (v).<sup>31</sup> The Commission's authority to examine the local administrative record is bolstered by the fact that Congress made clear that localities are prohibited from regulating the siting of wireless facilities based either "directly *or* indirectly" on the environmental effects of RF radiation. In order to ensure that localities cannot engage in such prohibited indirect regulation, the Commission cannot be limited to examining whatever written decision zoning boards might produce, but must be allowed to examine the entire record.

Finally, no wireless carrier is making the rather melodramatic suggestion that local governments must "gag[] all local citizens who wish to express concern about RF emissions

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<sup>29</sup> 476 U.S. 355, 374-75 (1986) ("*Louisiana PSC*").

<sup>30</sup> 47 U.S.C. § 152.

<sup>31</sup> See *Stadia Oil and Uranium Co. v. Wheelis*, 251 F.2d 269, 275 (10th Cir. 1957) ("It is an old maxim of the law that a person will not be permitted to do indirectly what he cannot do directly").

....<sup>32</sup> Citizens have the First Amendment right to make their views known to the local government and cannot be prevented from doing so. What the wireless carriers want — and what Section 332(c)(7)(B)(v) demands — is that the Commission have the authority to review the local administrative record in its entirety, including whatever testimony was elicited at zoning board hearings. In this role, the Commission is capable of sifting through and ignoring statements that are “improper, inappropriate and totally offensive,”<sup>33</sup> in order to determine whether a decision is in violation of federal law.

**V. IF STATES AND LOCALITIES ARE PERMITTED TO PROMULGATE THEIR OWN INDIVIDUALIZED COMPLIANCE REGIMES, THEY WILL EVISCERATE THE PREEMPTIVE INTENT OF CONGRESS IN DRAFTING SECTION 332(c)(7)(B)**

Wireless service providers generally supported the Commission’s proposed Alternative One regarding compliance verification as more consistent with the preemptive intent of Section 332(c)(7)(B)(iv) and its underlying policy allowing the federal government, and not each state and locality, to promulgate RF emissions standards that protect the health and welfare of the American people.<sup>34</sup> Specifically, these commenters noted that any greater demonstration of compliance would eviscerate the meaning of “categorically excluded,”<sup>35</sup> and would be unnecessary, given the penalties for rule violations.<sup>36</sup> In addition, the proposals the FCC is

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<sup>32</sup> NLC/NATOA Comments at 18.

<sup>33</sup> Orange County, Fla. Comments at 4.

<sup>34</sup> See Ameritech Comments at 5-7; BellSouth Comments at 5-6.

<sup>35</sup> AT&T Wireless Services, Inc. (“AT&T”) Comments at 2-5.

<sup>36</sup> GTE Comments at 7-8.

considering for categorically excluded facilities as part of Alternative Two add unnecessary burdens for the owners of these facilities, which, after extensive study, have already been deemed safe in the Commission's RF Orders and OET Bulletin 65.<sup>37</sup>

Carriers further argued that a rebuttable presumption of compliance with the Commission's RF emissions limitations would be consistent with Congress's intent to make the Commission, and not the states, the entity responsible for monitoring and regulating such emissions. As noted by these carriers, without such a rebuttable presumption, carriers would be put in the untenable position of demonstrating compliance twice — once before the Commission, and once at the state or local level.<sup>38</sup> In addition, if a local government suspects that a categorically excluded facility “will have a significant environmental effect,” it can petition the Commission under Section 1.1307(c)<sup>39</sup> to investigate the environmental impact of the facility in question.<sup>40</sup>

States and localities disagreed, arguing that they should be given broad discretion to promulgate their own RF certification and testing regimes. In support of their demands for autonomous RF compliance regimes, states and localities posited that Section 332(c)(7)(B) contains no explicit prohibitions on such local actions,<sup>41</sup> and that the Commission's proposed

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<sup>37</sup> See U S WEST Comments at 6-12; Sprint Spectrum Comments at 7-9.

<sup>38</sup> Ameritech Comments at 9; BellSouth Comments at 7.

<sup>39</sup> 47 C.F.R. § 1.1307(c).

<sup>40</sup> U S WEST Comments at 14-15.

<sup>41</sup> FCC Local State and Government Advisory Committee (“LSGAC”) Comments at 1.

carrier self-certification process described in Alternative One and rebuttable presumption of compliance cannot be trusted to preserve the health and welfare of the local citizenry.<sup>42</sup>

These arguments, if accepted by the Commission, would destroy the federal regulatory scheme that Congress set forth in Section 332(c)(7)(B)(iv), under which compliance “with the Commission’s regulations concerning [RF] emissions” preempts state and local attempts to regulate the siting of personal wireless facilities on the basis of RF emissions. This grant of Commission authority to regulate RF emissions is, by its own terms, both substantive and procedural, because implicit in the power to promulgate regulations “concerning [RF] emissions” is the power to regulate substantively how much energy can be emitted by a given facility, and to regulate procedurally how compliance is to be determined. Thus, the Commission is statutorily empowered to mandate procedures such as self-certification and a rebuttable presumption of compliance.

Finally, the self-certification process and the rebuttable presumption of compliance are not some sort of “shell game,”<sup>43</sup> under which carriers seek to shirk their responsibilities. Rather, the Commission has determined that the possibility of forfeitures or the loss of a license are sufficient incentives for licensees to take seriously the self-certification process. Further, far from being a “shell game,” the Commission’s procedures require the party that is best situated technically to evaluate its facilities — the licensee — to perform such evaluations. Given the economic incentives, including severe monetary sanctions for rule violations, there is absolutely

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<sup>42</sup> LSGAC Comments at 2; City and County of San Francisco at 4; NLC/NATOA Comments at 23-26.

<sup>43</sup> NLC/NATOA Comments at 28.



no reason to presume that licensees will routinely and deliberately make misrepresentations regarding the RF emissions of their facilities.

**VI. THE FCC SHOULD ACT QUICKLY ON PREEMPTION PETITIONS AND PARTICIPATION IN THE PROCEEDINGS SHOULD BE LIMITED TO INTERESTED PARTIES**

Wireless service providers also joined with PCIA in advocating a streamlined set of procedures for ruling on preemption petitions. These streamlined procedures included the Commission acting promptly on the petitions,<sup>44</sup> limiting participation in the proceedings to “interested” parties, including those “adversely affected” by state or local action,<sup>45</sup> and utilizing the Commission’s default judgment procedures in acting on the petitions.<sup>46</sup> As pointed out by PCIA in its opening round comments, such streamlined procedures are essential to the practical ability of carriers to seek relief from local decisions and regulations on RF matters that are inconsistent with federal standards. Without the ability to obtain such timely relief, carriers will find their business plans for facilities buildout badly disrupted, a result that is directly contrary to Congress’s intent in enacting Sections 332(c)(7)(B)(iv)-(v).

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<sup>44</sup> AT&T Comments at 6-7; GTE Comments at 9-10; Primeco Comments at 16-17.

<sup>45</sup> Ameritech Comments at 6-7; BellSouth Comments at 6-7.

<sup>46</sup> See U S WEST Comments at 22 (citing 47 C.F.R. § 1.724(b) (“Any party failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint”); 47 C.F.R. § 76.956(e) (“A cable operator that fails to file and serve a response to a valid complaint may be deemed in default. If the Commission deems a cable operator in default, the Commission may enter an order against the cable operator finding the rate to be unreasonable and mandating appropriate relief”).

A few localities requested that the Commission's preemption proceedings be open to as many people as possible.<sup>47</sup> This suggestion is both unnecessary and unsound as a matter of policy. First, because states and localities are fully capable of representing the interests of their citizens in proceedings before the FCC,<sup>48</sup> it is unnecessary to have these citizens, as well as the state or locality, participate in the Commission proceedings. Further, given that citizens are entitled to participate in the state or local decision that led to the preemption petition, they will have had the opportunity to make their opinions known. Second, this suggestion is unsound because it will inevitably lead to delays and the needless expenditure of Commission and petitioner resources, as the Commission and petitioners will be forced to address the frivolous claims that such wide open rules of standing will produce.

## **VII. CONCLUSION**

Section 332(c)(7)(B) contemplates that the Commission, and not the states, will regulate the environmental effects of RF regulation. Consistent with this expression of Congressional grant of authority, the Commission should promulgate a regulatory scheme that allows licensees to seek swift and certain preemption of state and local attempts to engage in the regulation of RF emissions.

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<sup>47</sup> NYC Comments at 5; State of Vermont Environmental Bd. Comments at 13-14.

<sup>48</sup> The record in this proceeding, which is replete with well drafted and articulate comments from states and localities, refutes the suggestion that the need of such entities to "hire the specialized FCC legal counsel" in order to participate in Commission proceedings requires according an inordinate amount of time for responses to preemption requests. Concerned Communities and Organizations Comments at 30.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

By: Katherine M. Harris

Katherine M. Harris  
Stephen J. Rosen  
WILEY, REIN & FIELDING  
1776 K Street, NW  
Washington, DC 20006  
(202) 429-7000

By: Mark J. Golden

Mark J. Golden,  
Senior Vice President, Industry Affairs  
Sheldon Moss  
Manager, Government Relations  
PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561  
(703) 739-0300

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